

10928

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 343.

THE CITY OF NEW ORLEANS, PLAINTIFF IN ERROR,

v.s.

MARY QUINLAN.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE
EASTERN DISTRICT OF LOUISIANA.

FILED JULY 8, 1898.

(16,928.)

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a UNITED STATES OF AMERICA:

Circuit Court of the United States, Eastern District of Louisiana,
New Orleans Division.

THE CITY OF NEW ORLEANS, Plaintiff in Error, }
 versus } No. 12501.
 MARY QUI LAN, Defendant in Error. }

Samuel L. Gilmore, Esquire, city attorney, and W. B. Sommerville, Esquire, assistant city attorney, for The City of New Orleans, plaintiff in error.

Charles Louque, Esquire, for Mary Quinlan, defendant in error.

Writ of error to the circuit court of the United States for the eastern district of Louisiana (New Orleans division) from the Supreme Court of the United States, returnable at the city of Washington, D. C., within thirty (30) days from the fifteenth (15th) day of June, A. D. 1898.

Transcript of Record.

1 United States Circuit Court, Eastern District of Louisiana,
New Orleans Division.

MARY QUINLAN }
 vs. } No. 12501.
 CITY OF NEW ORLEANS. }

Petition. Filed March 23rd, 1896.

To the hon. the circuit court of the United States for the eastern district of La.:

The petition of Mary Quinlan, a *femme sole*, a citizen of the State of New York, respectfully represents:

That your petitioner is the owner of a number of certificates made by the city of New Orleans, a corporation duly created under the laws of Louisiana, and payable to bearer, amounting to the sum of two thousand five hundred & sixteen $\frac{7}{100}$ dollars, as more fully appears by the list hereto annexed and made part hereof.

That the said city has lately passed ordinance 11962, C. S., whereby all the surplus funds of the year 1895 and previous years are set apart to pay the claims existing for back years.

That your petitioner accepts the terms of the ordinance and waives any other mode of payment except as may be hereinafter provided by law, as more fully appears by said ordinance, hereto annexed and made part hereof.

Wherefore petitioner prays that the City of New Orleans be cited hereto and, after due proceedings, that judgment be rendered herein for the sum of two thousand five hundred & sixteen $\frac{7}{100}$ dollars and interest, payable according to the terms of ordinance 11962, C. S.; and petitioner prays for general relief, etc.

(Signed)

1—343

LOUQUE & POMES, At'tys

2

Filed Dec. 19th, 1896.

No. 12430.

58%.

\$15.08.

Certificate of Ownership of Appropriation.

Approved June 26th, 1883; issued under ordinance No. 347, C. S.

NEW ORLEANS, Oct. 14, 1885.

This is to certify that under ordinance 8099, adopted Oct. 24th, 1882, the sum of fifteen $\frac{1}{2}$ dollars has been appropriated to Jno. Killilea A. Jardet, transferee, for and on account of street wages, Aug., 1882, and the said named or the bearer hereof shall, upon the surrender of this certificate (and not otherwise), be entitled to receive, in the order of the promulgation of said ordinance, a cash warrant on the treasurer on any funds in the treasury to the credit of the appropriate funds and not otherwise appropriated.

It is herein specially agreed to by the holder of this certificate that it bears no interest and shall not novate or in any manner affect the nature of the claim against the city under the ordinance referred to, but shall be simply an evidence of transferable ownership thereof, and whenever the ordinance, or that portion of it to which this certificate applies, is paid or cancelled by being tendered and received in payment of taxes, when authorized by law, then this certificate shall be surrendered to the office of the comptroller.

(Signed)

J. V. GUILLOTTE, *Mayor.*

(Signed)

BENJ. H. WATKINS,

Comptroller.

(On reverse side :)

MORALITY OF NEW ORLEANS, CITY HALL, June 26th, 1883.

No. 347, *Council Series.*

An ordinance to reduce to order and simplify the recording and management of unpaid accounts against the city for the years 1879, 1880, 1881, and 1882 by issuing for such as are ordinances certificates of ownership of appropriation on the terms and conditions provided for in this ordinance.

3 SECTION 1. Be it ordained by the mayor and council of the city of New Orleans, That any creditor of the city to whom an appropriation has been made, but in whose favor the comptroller cannot draw a warrant until there is money in the treasury to the credit of the appropriate account, not otherwise appropriated, shall be authorized upon demand to receive a transferable certificate of ownership of appropriation, entitling said creditor or bearer to receive a cash warrant for the amount due in the order of the promulgation of the ordinance authorizing the same.

SECTION 2. Be it further ordained, That the said creditor shall sign a receipt thereof, stipulating that the cash warrant shall be claimed only on the surrender of this certificate, and the acceptance

of said cash warrant shall be held and considered as an acceptance and consent to the provisions and conditions of this ordinance.

SECTION 3. Be it further ordained, That said cash warrant shall be issued strictly in the order of the promulgation of the ordinance making the appropriation.

SECTION 4. Be it further ordained, That the certificates issued under this ordinance shall not novate or in any manner affect the nature of the claim against the city under this ordinance referred to, but shall be simply an evidence of transferable ownership thereof, and whenever the ordinance, or that portion of it to which said certificate applies or refers, is paid or cancelled by being tendered and received in payment of taxes, that is the city's portion for the respective years for which said certificate has been issued when authorized by law, then said certificate shall be surrendered to the office of the comptroller.

SECTION 5. Be it further ordained, That the certificate created by this ordinance shall state upon its face the nature and object of its issue, with numbers, dates and names suitable to each, and upon its reverse this ordinance in full shall be printed, the whole in words and figures, as follows, with the blanks appropriately filled in when issued from the office of the comptroller.

4 Adopted by the council of the city of New Orleans June 21st, 1883.

W. H. MICHEL,
Assistant Clerk of Council.

Approved June 26th, 1883.

W. J. BEHAN, *Mayor.*

A true copy.

C. L. WALKER,
Secretary to the Mayor.

United States Circuit Court, Eastern District of Louisiana, New Orleans Division.

MARY QUINLAN
vs.
CITY OF NEW ORLEANS. } No. 12501.

Agreement as to Certificates Sued upon and Offered in Evidence. Filed June 24th, 1898.

It is hereby agreed by the undersigned counsel, representing plaintiff and defendant, that the record for the Supreme Court of the United States herein shall not contain any of the evidence offered on the trial of this case, with the exception of a copy of one of the certificates sued upon, as all of the certificates offered in evidence were on printed blanks, varying from one another only in the names of payees, the amounts to be paid, and the dates of said certificates, and the clerk of the court is dispensed from copying any

evidence in the transcript of appeal for the Supreme Court of the United States excepting the one copy of certificate above referred to.

(Signed)

CHARLES LOUQUE,

Att'y for Plaintiff.

(Signed)

W. B. SOMMERVILLE,

Att'y for Defendant.

5 United States Circuit Court, Eastern District of Louisiana,
New Orleans Division.

MARY QUINLAN

vs.

CITY OF NEW ORLEANS.

} No. 12501.

Answer. Filed April 10th, 1896.

And now into this honorable court comes the defendant, The City of New Orleans, who, for answer to the petition herein filed, denies each and every allegation therein contained, save and except what may be hereinafter specially admitted.

Defendant admits the passage of ordinance No. 11962, C. S., but denies that the plaintiff is entitled thereunder to the relief prayed for herein, and avers that by act No. 20 of 1882 and legislation amendatory of said act all surplus was specially dedicated to purposes of public permanent improvement.

(Signed)

E. A. O'SULLIVAN,

City Attorney.

6 United States Circuit Court, Eastern District of Louisiana,
New Orleans Division.

MARY QUINLAN

vs.

CITY OF NEW ORLEANS.

} No. 12501.

Supplemental Petition. Filed Dec. 15th, 1896.

To the hon. the circuit court of the United States for the eastern district of Louisiana:

The supplemental petition of Mary Quinlan, a citizen of the State of New York, respectfully represents:

That your petitioner is the owner of a number of the certificates, payable to bearer, drawn by the city of New Orleans, through its proper officers, as per list annexed hereto, amounting to the sum of six hundred and nineteen $\frac{1}{10}$ dollars.

That the city of New Orleans is a corporation duly created by law and a citizen of the State of Louisiana.

That under the terms of the original petition herein filed your petitioner, being in good faith and believing that the city of New Orleans did intend to carry out in similar good faith the terms of ordinance No. 11962, C. S., accepted the conditions thereof and was proceeding to carry *his* part thereof under these proceedings.

Your petitioner further represents:

That in utter disregard of the obligations under which the said city of New Orleans was to carry out the same, she has employed the money collected for said fund and has tacitly repealed the said ordinance 11962 by passing other ordinances contrary thereto and appropriating the said funds.

Your petitioner avers that he is entitled to an unlimited judgment against the city of New Orleans, with interest from the date of the certificates, for the following reasons:

7 That the city of New Orleans has from January 1st, 1888, to Jan'y 1st, 1896, remitted the sum of thirty-two thousand and one hundred and sixty-five dollars of interest due on the taxes of 1882, out of which petitioner's claim were payable, and contrary to the law.

Your petitioner further avers that from the taxes of 1882 the sum of three thousand nine hundred and forty-seven $\frac{4}{5}$ dollars has been diverted to the payment of the running expenses of the government.

That if said above sum had been properly accounted for and administered your petitioner would have been paid long since.

Wherefore petitioner prays that this supplemental petition be filed; that the city of New Orleans be cited hereto, and, after due proceedings, that judgment be rendered herein in favor of your petitioner and against said city of New Orleans in the full sum of three thousand one hundred and thirty-five $\frac{7}{8}$ dollars, with legal interest from Jan'y 1st, 1883, and all costs of suit, and for general relief, etc.

(Signed)

LOUQUE & POMES, Att'ys.

Order.

Let the foregoing supplemental petition be filed.

(Signed)

CHARLES PARLANGE, Judge.

New Orleans, Dec. 15, '96.

8

List of Scrip under Ord. —, A. S.

No. of
certificates.

12419.	.	18.85
12418.	.	9.42
12417.	.	19.57
12416.	.	19.57
12415.	.	31.32
11155.	.	21.
11153.	.	6.82
52.	.	10.92
51.	.	10.92
50.	.	24.36
49.	.	21.
48.	.	6.82
47.	.	13.91
46.	.	14.17

THE CITY OF NEW ORLEANS VS. MARY QUINLAN.

	45.	14.17
	44.	14.17
	43.	25.20
	42.	6.03
	41.	13.65
	40.	14.17
	39.	14.17
	38.	22.68
	37.	29.
	12432.	15.
	12430.	
	12429.	15.08
	28.	33.64
	27.	29.00
	26.	9.42
	25.	33.64
9	24.	19.20
	23.	19.57
	22.	19.57
	21.	34.80
	20.	8.33
		619.04

Interest remitted for the year 1882 from Jan'y to June, 1888.	235
July to Dec., 1888.....	1147
Jan'y to June, 1889	4873
" " 1889	4104
" " 1890	5700
" " 1890	2052
" " 1891	811
" " 1891	2975
" " 1892	2132
" " 1892	1714
" " 1893	1903
" " 1893	806
" " 1894	699
" " 1894	1119
" " 1895	855
" " 1895	1040
	\$32165

10 United States Circuit Court, Eastern District of Louisiana,
New Orleans Division.

MARY QUINLAN
vs.
 CITY OF NEW ORLEANS. } No. 12501.

Exception. Filed Dec. 26th, 1896.

Now into court comes the City of New Orleans and excepts to the jurisdiction of this court *ratione persona*.

That plaintiff's petition contains no averment that this suit could have been maintained by the assignors of the claim or certificates sued upon by Mary Quinlan and which form the basis of this action.

The City of New Orleans prays for oyer of the certificates sued upon in the petition and supplemental petition herein.

Wherefore defendant prays that the petition and supplemental petition filed herein be dismissed at plaintiff's costs.

(Signed)

W. B. SOMMERVILLE,
Assistant City Attorney.

United States Circuit Court, Eastern District of Louisiana, New Orleans Division.

Hearing and Submission of Exceptions.

Extract from the minutes, November term, 1896.

NEW ORLEANS, MONDAY, February 8th, 1897.

Court met pursuant to adjournment.

Present: Hon. Charles Parlange, district judge.

" J. Ward Gurley, U. S. attorney.

MARY QUINLAN
vs.
 CITY OF NEW ORLEANS. } No. 12501.

11 This cause came on to be heard upon the exceptions of the defendant—W. B. Sommerville, assistant city attorney, appearing for exceptor; Chas. Louque, for the plaintiff—and was argued by counsel and submitted, when the court took time to consider.

United States Circuit Court, Eastern District of Louisiana, New Orleans Division.

Order Overruling Exceptions.

Extract from the minutes, November term, 1896.

NEW ORLEANS, WEDNESDAY, *Feb'y* 10th, 1897.

Court met pursuant to adjournment.

Present: Hon. Charles Parlange, district judge.

" J. Ward Gurley, U. S. attorney.

MARY QUINLAN
vs.
CITY OF NEW ORLEANS. } No. 12501.

This cause came on to be heard at a former day upon the exceptions filed by the defendant herein, and was argued by counsel and submitted.

On consideration whereof, it is ordered that the said exception to the jurisdiction of the court be overruled; it is further ordered that the prayer of the City, defendant, for oyer of the documents sued on be granted.

United States Circuit Court, Eastern District of Louisiana, New Orleans Division.

MARY QUINLAN
vs.
CITY OF NEW ORLEANS. } No. 12501.

Answer. Filed Feb'y 11th, 1897.

12 Now into this honorable court come- The City of New Orleans, defendant herein, and without waiving the exception hereinbefore filed but at all times insisting upon the same and excepting to the jurisdiction of the court *ratione personæ et materiax*, denies all and singular the allegations contained in plaintiff's amended and supplemental petition filed herein.

Further answering, defendant says that ordinance #11962, council series, pleaded by plaintiff, is *ultra vires*, illegal, null, and void; that under and by terms of the charter of the city of New Orleans, act #20 of 1882, and the subsequent charter of said city, #45 of 1896, together with the legislation amending the prior charter, the surplus and interest collected by the city of New Orleans for each year is specially dedicated to works of permanent public improvement, and that the same cannot be diverted to the payment of plaintiff's claims, or for any other purpose than for public improvements.

Wherefore defendant prays that this suit be dismissed at plaintiff's cost.

(Signed)

W. B. SOMMERVILLE,
Assistant City Attorney.

Supplemental Petition. Filed April 8th, 1897.

United States Circuit Court, Eastern District of Louisiana, New Orleans Division.

MARY QUINLAN
vs.
CITY OF NEW ORLEANS. } No. 12501.

To the hon. the circuit court of the U. S. for the east. dist. of La.:

The supplemental petition of Mary Quinlan, a citizen of New York, respectfully represents:

13 That the following amounts have been paid by the city of New Orleans out of the funds of 1882, although the budget appropriations had been exhausted, and without warrant of law:

Street wages.....	52,999.82
Bridges and crossings.....	3,788.12
Repairs	13,074.93
Markets.....	994.38
Salaries, water works & pub. bldgs.....	146.67
Court-house salaries.....	878.22
Aged and indigents.....	999.60
Insane.....	2,612.27
Engine-houses	379.24
Pounds	971.38
Public squares.....	822.16
Cemeteries.....	216.25
Police jail.....	1,954.35
Maintaining prisoners.....	338.40
Public printing.....	1,332.42
Law charges.....	2,631.31
Contingent.....	12,193.10
	<hr/>
	\$96,332.62

That the funds of 1882 have thus been *dilapidated* and wasted to the extent of ninety-six thousand three hundred and thirty-two $\frac{6}{10}$ dollars, and it would be inequitable to restrict your petitioner's claim to the revenues of the year when the same have been thus illegally dissipated.

Wherefore petitioner prays that this supplemental petition be filed, and that judgment be rendered as prayed for in the original and supplemental petitions herein filed, and for general relief, &c.

(Signed)

LOUQUE & POMES, *Att'y's.*

Service accepted.

W. B. SOMMERVILLE,
Ass't City Att'y.

N. O., April 7, '97.

2-343

Order.

Let this supplemental petition be filed.

(Signed)

CHARLES PARLANGE, Judge.

N. O., April 8th, 1897.

United States Circuit Court, Eastern District of Louisiana, New Orleans Division.

MARY QUINLAN }
vs. } No. 12501.
CITY OF NEW ORLEANS. }

Answer and Exceptions. Filed April 15th, 1897.

Now into this honorable court comes The City of New Orleans defendant herein, and without waiving the exception hereinbefore filed, but at all times insisting upon the same, and excepting to the jurisdiction of the court *ratione personæ et materiæ*, and upon further excepting to the amended and supplemental petition herein filed, on the ground that they alter the substance of plaintiff's demand by making it different from the one originally brought, and that a court of law is not competent to pass upon the matters contained in said supplemental petitions, and in the event that said exception be overruled, answering, denies all the allegations contained in plaintiff's petition filed herein.

Further answering, defendant says that the ordinance #11962, C. S., pleaded by plaintiff is *ultra vires*, illegal, null, and void.

That under and by the terms of the charter of the city of New Orleans, act # 20 of 1882, and the subsequent charter of said city, act # 45 of 1896, together with the legislation amending the prior charter, the surplus and interest collected by the city of New Orleans for each year is specially dedicated to work of permanent public improvement, and that the same cannot be diverted to plaintiff's claim or for any other purpose than for public improvement.

15 Further answering, defendants show that judgment cannot be rendered on the certificates or warrants sued upon by plaintiff herein because issued by an officer of the municipal corporation of New Orleans when there was no money in the treasury of the city against which said evidences of indebtedness were drawn, which was in violation of a prohibitory law contained in section 5, act # 30 of the General Assembly of the State of Louisiana for the year 1877.

Further answering, defendant shows that the ordinances Nos. 8004, 8005, 8096, 8097, A. S., amending the budgets of revenues and expenditures for the year 1882, under which plaintiff claims, are *ultra vires*, null, and void, for this, to wit:

1st. That ordinances 8004 and 8096, amending the budget of revenues, provides that item No. 13, "miscellaneous," be increased by \$86,000, so as to read \$171,000, and by \$50,000, so as to make it

\$221,000 instead of \$85,000, as it originally reads in the original budget, ordinance #7535, A. S., as in violation of a prohibitory statute forbidding the counsel to consider and adopt as a revenue miscellaneous or contingent resources, as contained in section 65, act 20, 1882.

2nd. That said ordinances, together with ordinances #8005 and 8097, amending the budget of expenditures, violates a prohibitory law, which forbids the appropriating of more than 75 per cent. of revenues for the ordinary expenses of the government, as contained in section 66, act 20, 1882, and section 1, act 38, 1897.

3rd. That said ordinances violate another prohibitory statute, which reserves for public works and improvements all revenues derived from uncertain or indefinite sources, causes, or circumstances, contained in section 65, act 20, 1882.

Further answering, defendant shows that the constitution, art. 45, forbids municipal authorities to pay, or authorize the payment, of any claims against them under any agreement or contract made without express authority of law, declaring all such unauthorized agreements or contracts to be null and void; and defendant shows that plaintiff's claims fall under said constitutional objections.

16 Further answering, defendant shows that in no event were plaintiff's claims to be paid out of the interest fund of 1882, as said fund was no part of the budgeted revenues of said year, and that plaintiff has therefore no interest in the same or — to question the city's action in reference thereto.

Therefore defendant prays that the exceptions herein filed be maintained; or, in the event of their being overruled, that plaintiff's suit be dismissed at her cost.

(Signed)

W. B. SOMMERVILLE,
Ass't City Att'y.

N. O., April 15, '97.

United States Circuit Court, Eastern District of Louisiana, New Orleans Division.

MARY QUINLAN
vs.
CITY OF NEW ORLEANS. } No. 12501.

Motion to Fix Exception. Filed April 21st, 1897.

On motion of W. B. Sommerville, assistant city attorney, it is ordered that the exceptions filed herein by defendant be set down for trial on the 24th day of April, 1897, at 11 a. m., & that plaintiff be notified thereof.

Service accepted.
(Signed)

CHARLES LOUQUE, *Att'y.*

17 United States Circuit Court, Eastern District of Louisiana,
New Orleans Division.

MARY QUINLAN
vs.
CITY OF NEW ORLEANS. } No. 12501.

Motion to Dismiss Supplemental Petition. Filed April 21st, 1897.

On motion of W. B. Sommerville, assistant city attorney, and upon suggesting to the court that the amended and supplemental petitions herein filed alter and vary the demand contained in the original petition, and that they are contrary thereto and destructive thereof, it is ordered that plaintiff show cause on the 24th day of April, 1897, at 11 a. m., why said supplemental and amended petition should not be dismissed, or show cause why she should not elect upon which petition she stands.

Service accepted.
(Signed)

CHARLES LOUQUE, *Att'y.*

United States Circuit Court, Eastern District of Louisiana, New Orleans Division.

Submission.

Extract from the minutes, November term, 1896.

NEW ORLEANS, SATURDAY, April 24th, 1897.

Court met pursuant to adjournment.
Present: Hon. Charles Parlange, district judge.
" J. Ward Gurley, U. S. attorney.

MARY QUINLAN
vs.
CITY OF NEW ORLEANS. } No. 12501.

This cause came on to be heard upon the exceptions of defendant to the supplemental petition of plaintiff and on the rule to dismiss or compel plaintiff to elect—W. B. Sommerville, assistant 18 city attorney, appearing for exceptor and mover; C. Louque, for plaintiff in suit—and was argued and submitted, when the court took time to consider.

United States Circuit Court, Eastern District of Louisiana, New Orleans Division.

Order Overruling Exceptions.

Extract from the minutes, November term, 1897.

NEW ORLEANS, MONDAY, Feb'y 21st, 1898.

Court met pursuant to adjournment.

Present: Hon. Charles Parlange, district judge.

MARY QUINLAN vs. CITY OF NEW ORLEANS.	} No. 12501.
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This cause came on to be heard at a former day upon the rule filed by the defendant on April 21st, 1897, to require the plaintiff to elect as to which of the supplemental petitions she intended to stand on, and also upon the exception filed by said defendant on April 15th, 1897, as to the inconsistency of the supplemental petitions with the original petitions, and after argument of counsel was submitted.

Whereupon and upon consideration thereof it is ordered that the rule to dismiss or elect be denied and the exceptions be overruled, but plaintiff is required to make her pleadings more specific, and especially to set forth the exact nature of her certificates and their aggregate sum, and the special fund or funds out of which she contends that said certificates were entitled in law to be paid, and also to set forth fully and distinctly the manner in which said funds are claimed to have been delapidated or impaired.

19 United States Circuit Court, Eastern District of Louisiana,
 New Orleans Division.

Order Allowing Defendant Time to Answer.

Extract from the minutes, November term, 1897.

NEW ORLEANS, TUESDAY, Feb'y 22nd, 1898.

Court met pursuant to adjournment.

Present: Hon. Charles Parlange, district judge.

MARY QUINLAN vs. CITY OF NEW ORLEANS.	} No. 12501.
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Order.

In this cause The City of New Orleans, defendant, is not required to file any further pleadings herein until ten days after the plaintiff shall have complied with the order of the court of Feb'y 21st, 1898, requiring her to amend her pleadings.

United States Circuit Court, Eastern District of Louisiana, New Orleans Division.

MARY QUINLAN
vs.
CITY OF NEW ORLEANS. } No. 12501.

Amended Petition. Filed Feb'y 28th, 1898.

To the hon. the circuit court of the U. S. for the eastern dist. of Louisiana:

The amended petition of Mary Quinlan, a citizen of the State of New York, respectfully represents:

That your petitioner now annexes a list of the city time certificates and the certificates themselves issued and due by the city of New Orleans, a corporation duly created by the laws of Louisiana and a citizen thereof, said certificates amounting to the sum of thirty-one hundred & thirty-five $\frac{7}{10}$ dollars.

That said certificates were issued for the year 1882, and were made payable out of revenues of said year, but the city of New Orleans, in violation of the rights of your petitioner, misappropriated the funds which were set apart and destroyed the restriction heretofore existing.

Your petitioner mentions as some of the illegal diversions that said ordinances were not paid in their numerical order; that the city council disregarded the one-twelfth rule directed by statute; that the city paid amounts for which no appropriation were made in the budget; that said city paid 20 $\frac{1}{2}\%$ to a city employee for collection of said taxes, which was an illegal act; that said city paid to the back-tax bureau and other parties the expenses for 1888 to 1892 to the amount of 3,947.48 dollars; that said city remitted a large amount of interest, contrary to law and the constitution.

That if the said funds had been properly administered and the revenues honestly paid to the creditors your petitioner would have been paid since 1883.

Wherefore petitioner prays that this amended petition be filed, and that the City of New Orleans be cited hereto, and, after due proceedings, that judgment be rendered in favor of your petitioner and against the City of New Orleans for the sum of thirty-one hundred and thirty-five $\frac{7}{10}$ dollars, with 5 % interest per annum from Jan'y 1st, 1883, and all costs of court; and petitioner prays for general relief, &c.

(Signed)

CHARLES LOUQUE, Attorney.

21 United States Circuit Court, Eastern District of Louisiana,
New Orleans Division.

MARY QUINLAN
vs.
CITY OF NEW ORLEANS. } No. 12501.

Exceptions. Filed March 7th, 1898.

Now into court comes The City of New Orleans, defendant herein, and for exception to the third amended petition of plaintiff filed herein shows that the same is too vague, general, and indefinite for respondent to attempt to answer thereto.

That said amended petition does not conform to the order issued herein by this court, requiring plaintiff to make her pleadings more specific and to especially set forth the exact nature of her certificates.

That plaintiff does not say whether she abandons the demand made by her in the original petition filed herein by her, asking for the enforcement of ordinance # 11962, council series, or not.

That plaintiff does not allege what kind of certificates she sues upon, nor the fund or funds out of which she contends that said certificates are entitled to be paid.

That plaintiff in said petition does not allege what appropriations were made by the city council for her benefit, nor what amounts were paid by the city without appropriations being made therefor in the budget, nor what amount or amounts were paid to city employés for collecting city taxes of 1882; nor to whom said amounts were paid, nor when any amounts were paid to said employés.

The plaintiff in her said amended petition does not state what amount of interest on taxes was remitted by the city, nor when it was remitted.

That defendant is entitled to know, and the court should be informed, when the amounts claimed by plaintiff came into the city treasury, how they were diverted, to whom paid, at what time paid, and for what purpose.

Wherefore defendant prays that plaintiff be ordered to further amend her pleadings in this cause, in conformity with the order of the court hereinbefore made and in accordance with the objections made in this exception, within a time to be fixed by this court; otherwise that this suit be dismissed at plaintiff's cost.

(Signed)

W. B. SOMMERVILLE,
Assistant City Attorney.

United States Circuit Court, Eastern District of Louisiana, New Orleans Division.

Order Overruling Exceptions.

Extract from the minutes, November Term, 1897.

NEW ORLEANS, SATURDAY, March 19th, 1898.

Court met pursuant to adjournment.

Present: Hon. Charles Parlange, district judge.

MARY QUINLAN vs. CITY OF NEW ORLEANS.	} No. 12501.
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This cause came on to be heard upon the exception filed by the defendant to the amended petition filed—present, W. B. Sommerville, assistant city attorney, for exceptor; Charles Louque, for plaintiff—and was argued.

Whereupon and on consideration thereof it is ordered that said exception be overruled and defendant file its answer in 5 days.

23 United States Circuit Court, Eastern District of Louisiana, New Orleans Division.

MARY QUINLAN vs. CITY OF NEW ORLEANS.	} No. 12501.
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Exception of Prescription. Filed March 21st, 1898.

Now into court comes the City of New Orleans and pleads in bar to plaintiff's claim the prescription of one, three, five, and ten years, as provided in the laws of the State of Louisiana, and defendant pleads said laws, particularly articles # 3534, # 3538, as amended by act # 78 of the General Assembly of the State of Louisiana, # 3540 and # 3544 of the Civil Code of Louisiana; and defendant asks that this suit is dismissed at plaintiff's cost.

(Signed) W. B. SOMMERVILLE,
Ass't City Att'y, of Counsel for Defendant.

United States Circuit Court, Eastern District of Louisiana, New Orleans Division.

MARY QUINLAN vs. CITY OF NEW ORLEANS.	} No. 12501.
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Answer. Filed March 22nd, 1898.

Now into court comes the City of New Orleans, and, without waiving, but at all times insisting upon, the exceptions and pleadings heretofore filed—and specially the plea to the jurisdiction of

this court *ratione personæ et materiae*, and the exception of prescription, all of which are now pleaded anew, as set forth in the pleas heretofore filed herein, and at all times invoking the benefit of said pleas—answers, denying all and singular each and all the 24 allegations in plaintiff's petition and amended petitions herein filed, and asks that this suit be dismissed at plaintiff's cost.

(Signed)

W. B. SOMMERVILLE,
Ass't City Attorney.

United States Circuit Court, Eastern District of Louisiana, New Orleans Division.

Case Called, Jury Empanneled, Hearing, and Continuance.

Extract from the minutes, November term, 1897.

NEW ORLEANS, MONDAY, April 11th, 1898.

Court met pursuant to adjournment.

Present: Hon. Charles Parlange, district judge.

MARY QUINLAN vs. CITY OF NEW ORLEANS.	} No. 12501.
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This cause was called for trial.

Present: Charles Louque, attorney for plaintiff; W. B. Sommerville, ass't city att'y, for defendant.

Whereupon, before the jury was empanneled, counsel for the defendant, City of New Orleans, moved that the court hear the plea of prescription filed by said defendant before the jury is empanneled and decide said plea; which motion was refused by the court, and counsel for defendant reserved a bill of exception.

And thereupon the following-named jurors were sworn and empanneled to well and truly try the issue joined herein, to wit:

1. Jno. C. Baker.	7. Amedee C. Jaume.
2. Chas. Masicot.	8. John Hogan.
3. Henry Ehrensing.	9. W. H. Krone.
4. L. Macready.	10. J. Walker Goodrich.
5. Jno. D. Kelly.	11. Christian Dreyer.
6. P. A. Labarthe.	12. Jno. B. Chisolm.

When the court appointed J. C. Baker foreman of the jury 25 and the trial was proceeded with.

After hearing the pleadings, evidence, and testimony in part, it was ordered that the cause be continued until tomorrow at 11 a. m.

United States Circuit Court, Eastern District of Louisiana, New Orleans Division.

Hearing and Continuance.

Extract from the minutes, November term, 1897.

NEW ORLEANS, TUESDAY, April 12th, 1898.

Court met pursuant to adjournment.

Present: Hon. Charles Parlange, district judge.

MARY QUINLAN
vs.
CITY OF NEW ORLEANS. } No. 12501.

This cause, as continued from yesterday, was this day resumed, and the counsel for the respective parties, as well as the jurors empaneled in the cause, being all present, the trial was proceeded with.

After hearing further evidence and testimony and arguments from the counsel for the respective parties, it was ordered that the cause be continued until tomorrow at 11 a. m.

26 United States Circuit Court, Eastern District of Louisiana,
New Orleans Division.

Order Overruling Plea of Prescription.

Extract from the minutes, November term, 1897.

NEW ORLEANS, WEDNESDAY, April 13th, 1898.

Court met pursuant to adjournment.

Present: Hon. Charles Parlange, district judge.

MARY QUINLAN
vs.
CITY OF NEW ORLEANS. } No. 12501.

In this cause, the court having duly considered the plea of prescription filed by the defendant, it is ordered that the said plea of prescription be, and the same is hereby, overruled, the counsel for said defendant reserving a bill of exception.

United States Circuit Court, Eastern District of Louisiana, New Orleans Division.

Verdict.

Extract from the minutes, November term, 1897.

NEW ORLEANS, WEDNESDAY, April 13th, 1898.

Court met pursuant to adjournment.

Present: Hon. Charles Parlange, district judge.

MARY QUINLAN	vs.	No. 12501.
CITY OF NEW ORLEANS.		

27 This cause, as continued from yesterday, was this day resumed, and the counsel for the respective parties, as well as the jurors empanneled in the cause, being all present, the trial was proceeded with.

After hearing the charge of the court, the said jury did then and there in open court, through their foreman, render and deliver the following verdict under the instructions of the court, to wit:

We, the jury, find a verdict for the plaintiff against the defendant, The City of New Orleans, for the sum of twenty-six hundred and thirty-five dollars and seventy-four cents (\$2,635.74), payable out of the city's revenues for the year 1882, and out of any surplus of the revenues of any subsequent years which the city council may appropriate to that purpose.

JNO. C. BAKER, *Foreman.*

April 13th, 1898.

Whereupon it is ordered that the said verdict be recorded, and it is done accordingly.

United States Circuit Court, Eastern District of Louisiana, New Orleans Division.

MARY QUINLAN	vs.	No. 12501.
CITY OF NEW ORLEANS.		

Rule for New Trial. Filed April 16th, 1898.

On motion of Charles Louque, attorney for plaintiff, and on suggesting to the court that the verdict of the jury and judgment herein rendered are contrary to law and the evidence on the following grounds:

1°. That the court erred in its refusal to charge the jury that the monthly *pro rata* was binding on the city of N. O. under the provisions of act 68 of 1877.

2°. That the court erred in its refusal to charge that the diversion of funds of 1882 to pay the running expenses of other

years in an amount in excess of plaintiff's claim entitled her to an absolute judgment.

3°. That the court erred in its refusal to charge the jury that the remission of the taxes of 1882 or a part thereof, coupled with the fact that the city failed to show that said remission did not injure plaintiff's claim, and that the burden of proof was on her to show the amount or extent thereof.

4°. That the court erred in charging the jury directly that the evidence did not show any injury to the plaintiff, and by directing a verdict of a qualified nature that the question of fact involved was peculiarly within the province of the jury.

5°. That the revenues of 1882, out of which the judgment is made payable, are practically exhausted and plaintiff will and can never be paid out of such a source.

It is therefore ordered that the City of New Orleans do show cause, on April 30th, 1898, at 11 o'clock a. m., why a new trial should not be granted herein.

29 United States Circuit Court, Eastern District of Louisiana,
New Orleans Division.

Order Refusing New Trial.

Extract from the minutes, April term, 1898.

NEW ORLEANS, SATURDAY, May 28th, 1898.

Court met pursuant to adjournment.

Present: Hon. Charles Parlange, district judge.

MARY QUINLAN
vs.
CITY OF NEW ORLEANS. } No. 12501.

This cause came on to be heard at a former day upon the rule for a new trial filed by plaintiff, and was submitted.

On consideration thereof, it is ordered that a new trial herein be refused and the verdict remain undisturbed.

Judgment.

Extract from the Judgment Book.

Circuit Court of the United States, Fifth Circuit and Eastern District
of Louisiana, New Orleans Division, November Term, 1897.

NEW ORLEANS, WEDNESDAY, April 13th, 1898.

Court met pursuant to adjournment.

Present: Hon. Charles Parlange, district judge.

MARY QUINLAN
vs.
CITY OF NEW ORLEANS. } No. 12501.

By reason of the verdict of the jury herein and in accordance therewith—

It is ordered, adjudged, and decreed that the plaintiff, Mary Quinlan, do have and recover from the City of New Orleans the sum of twenty-six hundred and thirty-five dollars and seventy-four cents (\$2,635.74), payable out of the city's revenues for the year 1882 and out of any surplus of the revenues of any subsequent years which the city council may appropriate to that purpose, together with all the costs of suit.³⁰

Judgment rendered April 13th, 1898; judgment signed June 4th, 1898.

(Signed)

CHARLES PARLANGE, Judge.

United States Circuit Court, Eastern District of Louisiana, New Orleans Division.

MARY QUINLAN
vs.
CITY OF NEW ORLEANS. } No. 12501.

Certificate of Judge. Filed June 15th, 1898.

This is to certify that The City of New Orleans, defendant herein, before answering to the merits of the petition of Mary Quinlan plaintiff herein, filed in this court an exception to the jurisdiction of the court, as follows:

"Now into court comes the City of New Orleans and excepts to the jurisdiction of this court *ratiōne personae*.

"That plaintiff's petition contains no averment that this suit could have been maintained by the assignors of the claims or certificates sued upon by Mary Quinlan, and which form the basis of this action.

"Wherefore defendant prays that the petition and supplemental petition filed herein be dismissed at plaintiff's cost."

That said exception was regularly tried and overruled.

That the city thereafter answered; there was a trial on the merits, and judgment was rendered in favor of Mary Quinlan, plaintiff.

The certificates sued on were made by the city of New Orleans and made payable to a designated person or to bearer.³¹

In overruling the exception I said:

In the leading case of *Newgass vs. N. O.*, 33 F. R., 196, Judge Billings (the circ. judge concurring) held that the proper construction of 1st sec. of act of Congress of March 9, 1887, relative to suits brought by assignees of promissory notes and choses in action, is:

"That the circ. court shall have no jurisdiction * * * (of such suits), except over:

1°. Suits upon foreign bills of exchange.

2°. Suits that might have been prosecuted in such court to recover the said contents if no assignment or transfer had been made.

3°. Suits upon choses in action payable to bearer and made by a corporation."

So that Judge Billings maintained the jurisdiction as to suits on

chooses in action payable to bearer and made by the city of New Orleans, and he denied the jurisdiction as to suits on choses in action made by the city but requiring assignment (*i. e.*, not payable to bearer).

Judge Billings' construction seems to have been followed without dissent:

Rollins vs. Chaffe Co., 34 F. R., 91.

Laird vs. Indemnity Assur. Co., 44 F. R., 712.

Justice Miller in Wilson vs. Knox Co., 43 F. R., 481.

Bank vs. Barling, 46 F. R., 357.

Thompson vs. Searey Co. (C. C. A.), 57 F. R., 1036.

Nelson vs. Eaton (C. C. A.), 66 F. R., 377.

Benjamin vs. N. O., 153 U. S., 411, was a suit upon warrants payable "to the order of A. B." and upon others simply stating that the Metropolitan police board was "indebted to C. D."

See the warrants on page 419 of vol. 153 U. S.

32 While the warrants in the Benjamin case were choses in action made by a corporation, yet, as they were not payable to bearer, the Supreme Court held, 153 U. S., 433, that to sue upon them the assignee must bring himself within Judge Billings' class 2—*i. e.*, he must allege that his assignor could have sued.

As the board of Metropolitan police was a Louisiana corporation, the Benjamin case also virtually disposes of the contention that sec. 1 of act of M'ch 9, 1887, applies only to non-resident corporations.

Done and signed at New Orleans, La., June 14, 1898.

(Signed)

CHARLES PARLANGE,
U. S. Judge.

United States Circuit Court, Eastern District of Louisiana, New Orleans Division.

MARY QUINLAN
vs.
CITY OF NEW ORLEANS. } No. 12501

Petition of Defendant for Writ of Error. Filed June 15th, 1898.

To the hon. the judges of the United States circuit court for the fifth circuit and eastern district of Louisiana :

The petition of The City of New Orleans, defendant in the above-entitled cause, with respect represents :

That on the 13th day of April, 1898, this hon. court rendered a decree and entered judgment herein in favor of Mary Quinlan, plaintiff herein, which said decree and judgment became final on the 4th day of June, 1898.

That in said judgment and decree and in the proceedings prior thereto certain errors were committed to the prejudice of this defendant, all of which will more in detail appear from the assignment of errors which is filed with this petition.

33 That in this case defendant excepted and pleaded to the jurisdiction of this honorable court in this case, and there was drawn in question the jurisdiction of this honorable court under the statutes of the United States, and the decree and judgment of this honorable court is adverse to said exception and plea to the jurisdiction of this honorable court.

That manifest errors have happened, to the great prejudice and damage of petitioner, in the final decree and judgment herein.

That petitioner desires a writ of error from the said decree and judgment of this honorable court to the Supreme Court of the United States.

Wherefore petitioner prays that a writ of error may be allowed and issue in this behalf to the Supreme Court of the United States for the review and correction of errors in the judgment of this honorable court in this case, and that a transcript of the record of the proceedings and papers in this case, duly authenticated, may be sent to the Supreme Court of the United States upon petitioner furnishing bond and security in such sum as the court may direct, and that said Mary Quinlan may be duly cited to appear and answer in the premises.

And petitioner prays for such further orders as may be necessary in the premises.

(Signed)

W. B. SOMMERVILLE,
Sol'r for Defendant.

Order.

Let the prayer of the foregoing petition be granted, and let a writ of error be allowed as prayed, upon petitioner furnishing bond, with solvent surety, in the sum of \$250, conditioned as the law directs.

(Signed)

CHARLES PARLANGE,
U. S. Judge.

N. O., June 15th, 1898.

34 United States Circuit Court, Eastern District of Louisiana,
New Orleans Division.

MARY QUINLAN
vs.
CITY OF NEW ORLEANS. } No. 12501.

Assignment of Errors. Filed June 15th, 1898.

Now comes, by its counsel, The City of New Orleans, the defendant, in the United States circuit court in the above-entitled suit of Mary Quinlan vs. The City of New Orleans, and this defendant shows that in the record of proceedings aforesaid there is manifest error in this, that the decree in this suit should have been given for the City of New Orleans against the said Mary Quinlan, and the said plaintiff in error especially assigns the errors in said decree to be relied on in the Supreme Court of the United States for the reversal of said decree being as follows, to wit :

That the plaintiff seeks to recover upon certificates issued by the city of New Orleans, of which said plaintiff is assignee of the city employés, to whom said certificates originally issued, or bearer, and that she acquired same from such employés; that said certificates are all payable to the person, the employé of the city to whom they originally issued, or bearer, a copy of one of said instruments being annexed to this assignment; that the plaintiff seeks to recover as assignee of debts on the pay-rolls of the city of New Orleans, due employés of the said city, all citizens of Louisiana, for their services as street-cleaners, etc., and assigned by them; and it thus appearing that the suit is brought substantially and in effect by plaintiff as assignee of written instruments—*i. e.*, time certificates drawn to order—all said certificates and debts being choses in action, under the law there being no jurisdiction in this court of suits by assignees of such choses in action as those sued on by plaintiff without averment and proof that the assignors thereof could have sued if
 35 no assignment had been made, and there being no such averment in the petition and supplemental petitions, and the fact being that the assignors could not have sued in this court all citizens of Louisiana, and there being no jurisdiction in this court to decree payment of the amount of \$2,635.74 to the parties, all citizens of Louisiana, it results that in all aspects the United States circuit court had no jurisdiction to entertain the suit or render the decree herein appealed from, and the court erred in not sustaining, but, on the contrary, overruling and dismissing, the exception filed by the City of New Orleans to dismiss the suit for want of jurisdiction on the grounds herein assigned and in the exception.

And The City of New Orleans, defendant herein, prays that the decree aforesaid may be reversed and set aside and plaintiff's suit dismissed, and that this defendant may be restored to all things which it has lost by occasion of said decree and judgment.

(Signed)

W. B. SOMMERSVILLE,
Solicitor for the City of New Orleans.

N. O., June 11, '98.

No. 16120.

\$4.00.

Certificate of Ownership of Appropriation.

Approved June 26th, 1883; issued under ordinance No. 347, C. S.

NEW ORLEANS, Aug. 22, 1884.

Comptroller's Office, This is to certify that under ordinance 177,
 City of New Or adopted March 15, 1883, the sum of four dol-
 leans. lars has been appropriated to Mrs. Morissey
 H. Neugass, transferee, for and on account of
 street wages, carts, Oct., 1882, and the said named or the bearer
 hereof shall, upon the surrender of this certificate (and not
 36 otherwise), be entitled to receive, in the order of the promul-
 gation of said ordinance, a cash warrant on the treasurer on
 any funds in the treasury to the credit of the appropriate fund and
 not otherwise appropriated.

It is herein specially agreed to by the holder of this certificate that it bears no interest and shall not novate or in any manner affect the nature of the claim against the city under the ordinance referred to, but shall be simply an evidence of transferable ownership thereof, and whenever the ordinance, or the portion of it to which this certificate applies, is paid or cancelled by being tendered and received in payment of taxes when authorized by law, then this certificate shall be surrendered to the office of the comptroller.

J. N. HARDY, *Comptroller.*

D. M. KILPATRICK,
Mayor pro Tem.

Printed on reverse side:

MAYORALTY OF NEW ORLEANS,
CITY HALL, — 26th, 1883.
(No. 347, *Council Series.*)

An ordinance to reduce to order and simplify the recording and management of the unpaid accounts against the city for the years 1879, 1880, 1881, and 1882, by issuing for such as are ordinances certificates of ownership of appropriation on the terms and conditions provided for in this ordinance.

SECTION 1. Be it ordained by the mayor and council of the city of New Orleans, That any creditor of the city to whom an appropriation has been made, but in whose favor the comptroller cannot draw a warrant until there be money in the treasury to the credit of the appropriate account not otherwise appropriated, shall be authorized, upon demand, to receive a transferable certificate of ownership of appropriation, entitling said creditor or bearer to receive a cash warrant for the amount due in the order of the 37 promulgation of the ordinance authorizing the same.

SECTION 2. Be it further ordained, etc., That the said creditor shall sign a receipt therefor, stipulating that the cash warrant shall be claimed only on the surrender of the certificate, and the acceptance of said cash warrant shall be held and considered as an acceptance and consent to the provisions and conditions of this ordinance.

SECTION 3. Be it further ordained, That said cash warrants shall be issued strictly in the order of the promulgation of the ordinance making the appropriation.

SECTION 4. Be it further ordained, That the certificates issued under this ordinance shall not novate or in any manner affect the nature of the claim against the city under the ordinance referred to but shall be simply an evidence of transferable ownership thereof, and whenever the ordinance, or that portion of it to which such certificate applies and refers, is paid or cancelled by being tendered or received in payment of taxes, that is the city's portion for the respective years for which said certificate has been issued when authorized by law, then said certificate shall be surrendered to the office of the comptroller.

SECTION 5. Be it further ordained, That the certificate created by this ordinance shall state upon its face the nature and object of its issue, with numbers, dates and names suitable to each, and upon its reverse this ordinance in full shall be printed, the whole in words and figures as follows, with the blanks appropriately filled in when issued from the office of the comptroller.

Adopted by the council of the city of New Orleans, 21st June, 1883.

W. H. MICHEL,
Ass't Clerk of Council.

Approved 26th June, 1883.

W. J. BEHAN, *Mayor.*

A true copy.

W. L. WALKER,
Sec'y to the Mayor.

38

Bond for Writ of Error.

Filed June 16th, 1898.

UNITED STATES OF AMERICA:

Know all men by these presents that we, The City of New Orleans and Walter C. Flower, are held and firmly bound, jointly and severally, unto Mary Quinlan in the sum of two hundred and fifty dollars, lawful money of the United States of America, to be paid to the said Mary Quinlan, her heirs, executors, administrators, and assigns; for which payment, well and truly to be made, we bind ourselves and each of us, by himself and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated the sixteenth day of June, in the year of our Lord eighteen hundred and ninety-eight.

Whereas the said City of New Orleans having heretofore, to wit, on the fifteenth day of June, 1898, obtained a writ of error from the Supreme Court of the United States from and to reverse the decree rendered on the fourth day of June, 1898, by the circuit court of the United States for the fifth circuit, holding session in and for the district of Louisiana, in the suit of Mary Quinlan vs. The City of New Orleans, No. 12501 of the docket thereof:

Now, the condition of the above obligation is that if the above-bounden City of New Orleans shall prosecute its said appeal to effect and shall answer all damages and costs if it shall fail to make good its plea, then this obligation shall be void; otherwise to remain in full force and virtue.

(Signed)	CITY OF NEW ORLEANS.	[L. S.]
(Signed)	W. C. FLOWER, <i>Mayor.</i>	[L. S.]
(Signed)	W. C. FLOWER, <i>Surety.</i>	

Signed, sealed, and delivered in the presence of—
_____.
_____.

Approved:

(Signed)	CHARLES PARLANGE,
	<i>U. S. Judge.</i>

39 (Printed on reverse side:)

UNITED STATES OF AMERICA, }
District of Louisiana, } ss:

Personally appeared Walter C. Flower, who, being duly sworn, deposes and says that he is the surety on the within bond; that he resides in the city of New Orleans, Louisiana, and is worth the full sum of two hundred and fifty dollars over and above all his debts and liabilities and property exempt from execution.

(Signed)

W. C. FLOWER.

Subscribed and sworn before me this 16th day of June, 1898.

H. J. CARTER,
Commissioner U. S., Eastern District of Louisiana.

40 UNITED STATES OF AMERICA, ss:

The President of the United States to the honorable the judges of the circuit court of the United States in and for the fifth circuit and holding sessions for the eastern district of Louisiana, New Orleans division, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you or some of you, between Mary Quinlan and The City of New Orleans, a manifest error hath happened, to the great damage of the said City of New Orleans, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington within thirty days hereof, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Seal U. S. Circuit Court for
the 5th Circuit & Eastern
District of La.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court of the United States, this 24 day of June, in the year of our Lord one thousand eight hundred and ninety-eight.

E. R. HUNT,
*Clerk of the United States Circuit Court for
the Eastern District of Louisiana.*

Allowed by—

CHARLES PARLANGE,
U. S. Judge.

41 [Endorsed:] United States circuit court. No. 12501. Mary Quinlan *versus* City of New Orleans. Writ of error. No. —. U. S. circuit court, eastern district of Louisiana, New Orleans division. Filed Jun- 24, 1898. E. R. Hunt, clerk.

42 THE UNITED STATES OF AMERICA:

Circuit Court of the United States, Eastern District of Louisiana.
The President of the United States to Mary Quinlan, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, within 30 days from date hereof, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, in the cause wherein Mary Quinlan is plaintiff and The City of New Orleans is defendant, No. 12501 of the docket, to show cause, if any there be, why the judgment rendered against the said City of New Orleans, as in said writ mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Seal U. S. Circuit Court for
the 5th Circuit & Eastern
District of La.

(Signed)

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 25 day of June, in the year of our Lord one thousand eight hundred and ninety-eight.

CHARLES PARLANGE, Judge.

CLERK'S OFFICE.

A true copy.

E. R. HUNT, Clerk,
By H. J. CARTER, D'y Clerk.

June 25, 1898.

43 [Endorsed:] Return. United States circuit court, eastern district of Louisiana. No. 12501. Mary Quinlan *vs.* City of New Orleans. Citation. Marshal's return. No. —. U. S. circuit court, eastern district of Louisiana, New Orleans division. Filed Jul- 5, 1898. E. R. Hunt, clerk.

Received by U. S. marshal, New Orleans, La.

June 27, '98, personally appeared before the undersigned, clerk of the U. S. circuit court, John Early, who upon oath says that he served the within citation on Mary Quinlan by delivering a true copy thereof to Chas. Louque, attorney — record and agent for Mary Quinlan, in person, in the city of New Orleans, La.

JOHN EARLY,
Dep'ty U. S. Marshal.

Sworn to and subscribed before me this 5th day of July, 1898.

{ Seal of Henry J. Carter, U. S. Commissioner,
New Orleans, La., E. Dist. of La. }

H. J. CARTER,
U. S. Commissioner.

THE CITY OF NEW ORLEANS VS. MARY QUINLAN.

44 UNITED STATES OF AMERICA:

Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana.

CLERK'S OFFICE.

I, Edward R. Hunt, clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, do hereby certify that the foregoing 42 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had on the trial of the case of Mary Quinlan *versus* The City of New Orleans, No. 12501 of the docket of the said court.

Witness my hand and the seal of said court, at the city of New Orleans, this 5 day of July, A. D. 1898.

{ Seal U. S. Circuit Court for the 5th Circuit
& Eastern District of La. }

E. R. HUNT, Clerk.

I, Charles Parlange, United States judge for the eastern district of Louisiana, do certify that Edward R. Hunt, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, was at the time of signing said certificate and is now the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand, at the city of New Orleans, in said district, this 5 day of July, A. D. 1898.

CHARLES PARLANGE, Judge.

Endorsed on cover: Case No. 16,928. E. Louisiana C. C. U. S. Term No., 343. The City of New Orleans, plaintiff in error, *vs.* Mary Quinlan. Filed July 8th, 1898.